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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

14 KRISTINA KERLUS, individually,

15 Plaintiff,

VS.

16 DR. JENNIFER CORNEAL, in her individual
17 capacity; A. SANTOS, in her individual
18 capacity; CITY OF LAS VEGAS, a Municipal
19 corporation; and COUNTY OF CLARK, a
Municipal corporation; LAS VEGAS
METROPOLITAN POLICE DEPARTMENT,
jointly and severally

Case No.: 2:24-cv-02352-APG-DJA

**LVMPD'S REPLY IN SUPPORT OF
THE MOTION TO DISMISS
[ECF No. 44]**

Defendants.

22 Defendant Las Vegas Metropolitan Police Department (“LVMPD”) files this Reply in
23 support of the Motion to Dismiss, (ECF No. 44). Plaintiff’s Response confirms, not undermines,
24 the basis for dismissal of claims against LVMPD at this stage.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 **Motion to Dismiss under FRCP 12(b)(6):** Plaintiff’s Response makes a concession that
4 now creates a basis for dismissal of all her claims against LVMPD and its official, Defendant
5 Santos, albeit without prejudice. In an effort to oppose dismissal under NRS 41.036 of her
6 malicious prosecution claim in Count VII based on the ground that she did not notify LVMPD of
7 her intent to bring it within two years of this claim’s accrual date, Plaintiff argues that this claim
8 technically still has not yet accrued because “the original criminal proceeding ha[s] not reached
9 final termination” as the Nevada district court denied her “motion to dismiss with prejudice.”¹
10 When taking Plaintiff’s position as accurate, this concession means none of her claims are viable
11 against LVMPD or Santos at this time because these claims do not yet exist.

In other words, her position inherently concedes that she cannot establish the essential element of “favorable termination” of the criminal proceedings, as is required in order to bring her malicious prosecution claims in a civil lawsuit, because her criminal proceedings have not yet ended. So, in trying to escape dismissal of Count VII based on NRS 41.036, Plaintiff has inherently established a larger basis to dismiss not just Count VII but all her claims against LVMPD and Defendant Santos.

18 **Motion to Dismiss under FRCP 12(b)(5):** Plaintiff's Response still does not satisfy the
19 good cause and excusable neglect standard for the Court to overlook the untimely service of
20 process against LVMPD and retroactively declare it timely. In accord with FRCP 4 and FRCP
21 12(b)(5), dismissal of LVMPD is the proper outcome based on these unique circumstances—where

²³ Her First Amended Complaint did not contain this information; it alleged simply that the
²⁴ criminal charges were “dismissed.” (First Am. Compl. ¶¶ 56, 59, 107, ECF No. 7). However, the Court can consider it through the doctrine of judicial notice, as explained further in this Reply.

1 LVMPD did not receive notice of this case until five years and eight months already went by since
 2 the underlying conduct by LVMPD employees at issue in this case.

3 **II. ARGUMENT**

4 **A. Plaintiff's Response Creates a Judicially Noticeable Basis to Dismiss Her
 Claims against LVMPD and Defendant Santos Without Prejudice Because
 Her Claims against These Defendants Have Not Yet Accrued.**

5 LVMPD's Motion to Dismiss argues that the Court should dismiss her Nevada common
 6 law claim for malicious prosecution in Count VII because she did not timely notify LVMPD of
 7 her intent to bring this claim (or any others) within two years of this claim's accrual date as required
 8 by NRS 41.036. (LVMPD Mot. Dismiss 3:19–4:20, ECF No. 44). LVMPD Defendants identified
 9 the "accrual date" of Count VII as the date Plaintiff alleges her criminal charges were "dismissed":
 10 December 19, 2022. (*Id.*).

11 Plaintiff's Response inserts a new—and critical—fact that now shifts this analysis and
 12 supports dismissal of all her claims as to LVMPD and its official, Defendant Santons, without
 13 prejudice. She now asserts that, even though her criminal charges were dismissed, they were never
 14 dismissed with prejudice. She identifies how the Nevada criminal court denied her motion seeking
 15 to have criminal charges dismissed with prejudice. Plaintiff then concedes that "the original
 16 criminal proceeding" has never "reached final termination." (Pl.'s Resp. 7:3–22, ECF No. 60).

17 This fact about her criminal proceedings not reaching "final termination" is not alleged in
 18 the First Amended Complaint. Nonetheless, this fact stems from a court proceeding; proof of this
 19 proceeding is attached to Plaintiff's Response as Exhibit A; and it is undisputed among the parties.
 20 *Lee v. Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001). So the Court can take judicial notice
 21 of this criminal proceeding and properly rely on it when deciding dismissal. In fact, the Court can
 22 take judicial notice of the full criminal docket, which shows that the State opposed her motion to
 23 dismiss charges with prejudice. See *Anderson v. United States*, No. 2:18-cv-02173-JAD-EJY, 2020

1 U.S. Dist. LEXIS 235286, at *3 n.10 (D. Nev. Dec. 15, 2020) ("I take judicial notice of the docket
 2 and documents filed in Anderson's criminal matter underlying this lawsuit"); **Ex. B** to LVMPD's
 3 Reply, Docket of Crim. Proceedings.²

4 Plaintiff's view is that this lack of dismissal with prejudice means her civil claims
 5 *technically* have still not begun to accrue. So, according to Plaintiff, the absence of accrual at this
 6 time means two years have not passed for purposes of NRS 41.036 and, thus, she timely notified
 7 LVMPD of these claims.

8 But, when considering Plaintiff's concession that her malicious prosecution claim has not
 9 yet begun to accrue for purposes of NRS 41.036 because "the original criminal proceeding" has
 10 never "reached final termination," then Plaintiff cannot proceed with Count VII at all yet. *Best v.*
 11 *Beresford*, No. 3:18-cv-00554-RCJ-WGC, 2019 U.S. Dist. LEXIS 57557, at *13 (D. Nev. Feb. 27,
 12 2019). Her position establishes that she has not received "favorable termination" as required for
 13 her Nevada common law malicious prosecution claim against both LVMPD and its official,
 14 Defendant Santos. *Id.* ("Therefore, his claim has not yet accrued, and his malicious prosecution
 15 claims should be dismissed without prejudice. Plaintiff may re-file them once they have accrued,
 16 i.e., if and when he receives a favorable termination of the criminal proceeding in his favor.").

17 Stated differently, Plaintiff's malicious prosecution claim contains a necessary element that
 18 the criminal proceedings against her were terminated in her favor.³ *Bradford v. Scherschligt*, 803

19
 20 ² LVMPD is referring to this Exhibit as "B" to keep it in consecutive order with LVMPD's Motion
 to Dismiss, which already contains an Exhibit A.

21
 22 ³ *Thomas v. State Dep't of Pub. Safety*, No. CV07-00382 SOM/LEK, 2008 U.S. Dist. LEXIS
 23 40556, at *17 (D. Haw. May 16, 2008) ("It is undisputed that Thomas's assault charge was
 24 dismissed without prejudice on a procedural ground, meaning that Thomas could still be charged
 with an assault arising out of the same facts. Such a dismissal is insufficient to satisfy the first
 prong of the test for malicious prosecution, as it does not demonstrate that the state court criminal
 charge was terminated in Thomas's favor on the merits."); *Jordan v. Bailey*, 944 P.2d 828, 834
 (Nev. 1997) (citing an element of "malicious prosecution" under Nevada law being "termination
 of the prior criminal proceedings"); *LaMantia v. Redisi*, 38 P.3d 877, 879 (Nev. 2002).

1 F.3d 382, 388 (9th Cir. 2015). A dismissal without prejudice, however, allows the government
 2 “to reindict based on the same or similar charges.” *See United States v. Hayden*, 860 F.2d 1483,
 3 1488 (9th Cir. 1988). Thus, a dismissal of criminal charges *without* prejudice is not
 4 characteristically a “favorable termination” for purposes of satisfying this necessary element to a
 5 malicious prosecution claim. *Bradford*, 803 F.3d at 388 (“The court noted that a malicious
 6 prosecution claim does not accrue until the proceedings against the plaintiff have terminated in
 7 such manner that [they] cannot be revived. We find this reasoning persuasive.”); *Heck v.*
 8 *Humphrey*, 114 S. Ct. 2364, 2374 (1994) (“Just as a cause of action for malicious prosecution does
 9 not accrue until the criminal proceedings have terminated in the plaintiff’s favor, so also a § 1983
 10 cause of action for damages attributable to an unconstitutional conviction or sentence does not
 11 accrue until the conviction or sentence has been invalidated.”); *Manansingh v. United States*, No.
 12 2:20-cv-01139-DWM, 2024 U.S. Dist. LEXIS 70260, at *20 (D. Nev. Apr. 15, 2024) (discussing
 13 how favorable termination means the “prosecution ended” without a conviction and the demanding
 14 standard imposed by Nevada common law to establish this element). To be sure, Plaintiff’s
 15 Response confirms as much for her specific circumstances by stating “the original criminal
 16 proceeding” has never “reached final termination.” (Pl.’s Resp. 7:3–22, ECF No. 60).

17 Moreover, Plaintiff’s concession about her criminal proceedings affects all her claims
 18 against LVMPD and Defendant Santos, not just her malicious prosecution claim under Nevada
 19 common law in Count VII. Indeed, as cited above, her federal claims also require that she prove
 20 “favorable termination” of criminal proceedings. As a result, Plaintiff’s Count VII, Count VI, and
 21 Count III are subject to dismissal without prejudice at this time.

22 **B. Plaintiff Did Not Timely Provide LVMPD With Notice of This Lawsuit and
 23 Therefore, In Accord with Nevada Revised Statute 41.036, Cannot Proceed
 24 with Nevada State Law Claims against LVMPD.**

Even if the Court holds that Plaintiff can proceed with her Nevada common law malicious

1 prosecution claim in Count VII at this time because the claim began to accrue when the charges
 2 were “dismissed,” then case law establishes the accrual date for that claim as the date of dismissal.
 3 Here, that date is December 19, 2022, as stated in Plaintiff’s allegations.

4 Plaintiff’s Response provides no evidence or argument to establish that she provided
 5 LVMPD with notice of Count VII or her intent to bring civil claims within two years of this accrual
 6 date. LVMPD, by contrast, shows it did not receive such timely notice. *See Ex. A* to LVMPD
 7 Defs.’ Mot. Dismiss, Decl. Marleen Srok, ECF No. 44-1.

8 Plaintiff’s Response argues that LVMPD received timely notice for purposes of NRS
 9 41.036 because Plaintiff filed her Complaint on December 19, 2024. But case law expressly rejects
 10 that position. Notice for purposes of NRS 41.036 does not occur simply because a complaint is
 11 on file with a court:

12 This is the crux of the parties’ argument. Indeed, giving notice to LVMPD and
 13 Clark County was not a prerequisite to plaintiffs initiating litigation. But plaintiffs
 14 nonetheless needed to provide notice by service within two years of the claims’
 15 accrual. Here, plaintiffs waited to file until exactly two years after the incident. The
 16 statute [NRS 41.036] contains no built-in grace period, and plaintiffs did not serve
 the complaint on defendants until weeks later. Plaintiffs failed to give Clark County
 and LVMPD sufficient notice of their state law tort claims within the two-year
 accrual period as required by NRS 41A.036. Plaintiffs’ state law tort claims against
 Clark County and LVMPD must therefore be dismissed.

17 *Guillory v. Las Vegas Metro. Police Dep’t*, No. 2:23-CV-2010 JCM (BNW), 2025 U.S. Dist.
 18 LEXIS 43590, at *9 (D. Nev. Mar. 10, 2025); *Hartrim v. Las Vegas Metro. Police Dep’t*, No. 2:11-
 19 cv-00003-RLH-PAL, 2011 U.S. Dist. LEXIS 74945, at *7 (D. Nev. July 8, 2011) (same). Notice
 20 for purposes of NRS 41.036 occurs only through service of the Complaint on LVMPD or written
 21 letter to LVMPD advising of the intent to bring claims. Plaintiff never completed either form of
 22 notice within two years of December 19, 2022.

23 Additionally, LVMPD did not receive the required timely notice for purposes of NRS
 24 41.036 even though Plaintiff served Defendant Santos with the Complaint. There are three reasons

1 for that conclusion. First, Plaintiff did not serve Santos within two years of the December 19, 2022
 2 accrual date; she served Santos for the first time on April 8, 2025. Second, as Plaintiff stated in
 3 her first Motion to extend the service deadline, Plaintiff does not have records showing that
 4 LVMPD received actual notice of this case or notice of Plaintiff's intent to file it until after the
 5 initial service deadline already expired. (Mot. Extend 2:6–28, ECF No. 20) (declaring that “[u]pon
 6 information and belief, the named Defendants in this case have not been served with either the
 7 Complaint or First Amended Complaint” as of March 20, 2025). Third, the April 8, 2025 service
 8 on “A. Santos” occurred to her in Texas, not to LVMPD at its headquarters or associated addresses.

9 For these reasons, there is no support that LVMPD received notice for purposes of NRS
 10 41.036 within two years of the accrual date of Plaintiff's malicious prosecution claim in Count
 11 VII. NRS 41.036 therefore bars Count VII as a matter of law as to LVMPD and requires its
 12 dismissal with prejudice.

13 **C. Plaintiff's Allegations Do Not Plausibly Support a Theory of Municipal
 14 Liability against LVMPD As Is Asserted in Count VI of the First Amended
 15 Complaint.**

16 At the outset, Plaintiff's current allegations do not plausibly establish a violation of her
 17 constitutional rights because, as discussed above, she has now conceded that she cannot establish
 18 the necessary element to a malicious prosecution claim of “favorable termination” of criminal
 19 proceedings. Because the First Amended Complaint does not plausibly allege a violation of her
 20 constitutional rights through malicious prosecution, her *Monell* claim necessarily fails as to
 21 LVMPD. *Lockett v. Cty. of L.A.*, 977 F.3d 737, 741 (9th Cir. 2020) (“*Monell* claims thus require a
 22 plaintiff to show an underlying constitutional violation.”).

23 Besides, Plaintiff's Response does not identify a basis to overcome LVMPD's arguments
 24 for dismissal of her *Monell* claim due to the supporting allegations' conclusory nature. She simply
 repeats the conclusory, generalized allegations that make up her First Amended Complaint. (Pl.'s

1 Resp. 9:12–11:13, ECF No. 60) (incorrectly arguing that she plausibly alleged the *Monell* claim
 2 because she “pled that LVMPD did not have ‘adequate procedures and policies in place to prevent
 3 deliberate false statements and omissions of material facts from being presented in police reports
 4 by LVMPD detectives,’” “pled that this custom of the LVMPD was the moving force behind the
 5 deprivation of her constitutional right,” and “Plaintiff has pled that Defendant Santos’ conduct
 6 conformed to this custom”).

7 Plaintiff errs when arguing that she “is not required to show a pattern of ‘similar
 8 constitutional violations by untrained employees’” when trying to bring her *Monell* theory against
 9 LVMPD based on a failure to properly train officials to not fabricate evidence. (Pl.’s Resp. 10:6–
 10 7, ECF No. 60). Her own citation to *Martinez v. Los Angeles Police Dep’t*, No. 22-15509, 2024
 11 WL 3534489 (9th Cir. July 25, 2024), refutes that position. No. 22-15509, 2024 U.S. App. LEXIS
 12 18354, at *3 (9th Cir. July 25, 2024) (affirming judgment against the plaintiff on a *Monell* claim
 13 because “[the plaintiff] has introduced no evidence that this purported failure to train has produced
 14 a pattern of constitutional violations”).

15 Further, as LVMPD argued in its Motion, Plaintiff cannot create a viable *Monell* claim by
 16 asserting that LVMPD did not train its officers to not engage in clearly unlawful conduct of
 17 fabricating evidence to support criminal charges against a person. (LVMPD’s Mot. Dismiss 9:3–
 18 10:6, ECF No. 44); *see also Martinez*, No. 22-15509, 2024 U.S. App. LEXIS 18354, at *4
 19 (rejecting the plaintiff’s *Monell* theory that the claim can exist because it was “patently obvious”
 20 that officers would violate the plaintiff’s rights without a better training program “to train its
 21 employees to take steps to ensure that an arresting agency properly compared an arrested suspect’s
 22 identifying information against the identifying information contained in a warrant abstract that
 23 LAPD had sent to an outside police department”).

24 Altogether, Plaintiff’s Response tries to evade dismissal of her *Monell* claim against

1 LVMPD only by repeating the same conclusory allegations in the First Amended Complaint. Such
 2 allegations are not enough to proceed with a *Monell* claim past the pleadings stage.

3 **D. The Court Should Dismiss This Lawsuit as to LVMPD Because Plaintiff Did
 4 Not Timely Complete Service of Process against LVMPD and Plaintiff Has
 5 Not Shown Good Cause or Excusable Neglect to Extend the Deadline.**

6 Plaintiff incorrectly argues that there is good cause and excusable neglect for the Court to
 7 retroactively extend the time for Plaintiff to serve LVMPD and declare that Plaintiff's service
 8 attempt on May 14, 2025. For the same reasons LVMPD argued in its Response, (ECF No. 43),
 9 opposing Plaintiff's Motion to extend the time to complete service on LVMPD, Plaintiff's current
 arguments still fail to meet the good cause and excusable neglect standard.

10 Accordingly, Plaintiff's claims cannot proceed against LVMPD even if any of Plaintiff's
 11 claims are plausibly alleged in the First Amended Complaint. Dismissal of LVMPD is the proper
 12 outcome based on these unique circumstances—where LVMPD did not receive notice of this case
 13 until five years and eight months already went by since the underlying conduct at issue in this case.

14 **III. CONCLUSION**

15 For the reasons stated in the Motion to Dismiss and this Reply, the Court should dismiss
 16 Plaintiff's Count VII, Count VI, and Count III, which proceed against LVMPD and its official,
 17 Defendant Santos.

18 DATED this 31st day of July, 2025.

19 KAEMPFER CROWELL

20 By: /s/ Lyssa S. Anderson

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27 **Index of Exhibits**

28 **Ex. B - Docket of Crim. Proceedings**

CERTIFICATE OF SERVICE

I certify that I am an employee of KAEMPFER CROWELL, and that on the date below, I caused the foregoing **LVMPD'S REPLY IN SUPPORT OF THE MOTION TO DISMISS [ECF No. 44]** to be served via CM/ECF and/or First Class Mail (where indicated) addressed to the following:

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DATED this 31st day of July, 2025.

/s/ 
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